Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-934

RICHARD LAWRENCE and NICHOLAS BARNES,

Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO and THE CITY OF CHICAGO,

Appellees.

On Appeal From The Appellate Court Of Illinois, First Judicial District

MOTION TO DISMISS OR AFFIRM

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The Appellee, City of Chicago, moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Illinois Appellate Court on the grounds that the decision of the Illinois Appellate Court did not "[draw] in question the validity of a statute of any state" and is therefore not reviewable in this Court and on the ground that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

STATEMENT

Plaintiffs are taxpayers and parents of Chicago public school students. Their action sought equitable relief against the Board of Education of the City of Chicago, trustee and lessor of certain section 16 land, and the City of Chicago, lessee of the land. The Section 16 land involved is approximately 600 acres located on the Southwest Side of Chicago on which Chicago's Midway Airport is constructed.

The substance of plaintiffs' complaint was that the Board of Education had agreed to the application of a rental computation formula which resulted in an inadequate amount of rental income from the Midway Land to the Board. The plaintiffs contended that the allegedly inadequate rental was the consequence of either the Board's inattention to the management and income potential of the land or of a desire to subsidize the City of Chicago's efforts to revitalize Midway Airport. These alleged failings of the Board, plaintiffs complained, were in violation of the Board's duties as trustee of the Section 16 land for the benefit of the public schools.

After a trial, in which extensive evidence of the land's value and the Board's procedures in arriving at a rental formula was presented, the trial court found for the defendants and denied relief to plaintiffs. On appeal the Illinois Appellate Court affirmed the judgment of the trial court.

The Appellate Court found that the issues in the case were factual and that the judgment was supported by the manifest weight of the evidence. (Jurisdictional Statement, A14) The Court found that the Board acted in good faith in discharging its trust responsibilities and

that the business decisions it made with a view toward the long term maximization of profits balanced against short-term income opportunities, were not unsound. (Jurisdictional Statement, A9, A14). The Appellate Court also noted evidence that the value of the land was substantially lower than contended by plaintiffs and that plaintiffs had failed to recognize several items of valuable consideration flowing from the City to the Board in their computation of rental payments. (Jurisdictional Statement, A11-A13). The conclusion was that the total compensation from the City to the Board for the use of the land was fair and reasonable.

The Illinois Supreme Court denied plaintiffs leave to appeal the decision of the Appellate Court.

ARGUMENT

I.

THE ISSUES PRESENTED BY THE CASE ARE FACTUAL. THERE ARE NO SUBSTANTIAL ISSUES WARRANTING REVIEW BY THIS COURT.

Judgment was entered against plaintiffs because they failed to submit persuasive evidence either that the value of the land was so great as to warrant rentals higher than those actually paid or that the Board of Education had departed from its duties in the way that it discharged its trust responsibilities.

Plaintiffs attempted to prove through the testimony of a real estate expert that the land was worth in excess of $15,000,000 (A12) and accordingly should have generated rental income for the Board several times

that actually realized by the Board pursuant to its agreement with the City. That expert's testimony was premised upon the assumption that the land would be used for industrial purposes. The land, however, was not zoned for industrial use, testimony indicated that rezoning of the land for industrial use was, at best, problematic and there appeared to be an abundance of under-utilized industrial-zoned land in the vicinity. Testimony of a defense expert indicated that the highest and best alternative use of the land would be for residential purposes and that premised upon residential use the total value would be approximately $4,000,000. (Jurisdictional Statement, A12). Fair rental computations based upon the valuation indicated by defense evidence fully supported the reasonableness and fairness of the rental agreed upon and received by the Board.

Thus plaintiffs did not furnish credible evidence that the Board had failed to obtain an appropriate income from the land.

Nor did plaintiffs' evidence establish any other shortcomings in the Board's discharge of its trust responsibilities. Not only did the evidence fail to establish any dereliction in administration of the Board's duties but also the Court recognized that even if the Board had taken actions calculated to aid the City's efforts in encouraging an expansion of Midway facilities this was reflective only of a farsighted policy of improving the land's long term capital value. (Jurisdictional Statement, A8-A9).

For all of these reasons it is clear that the decision of the Appellate Court depends entirely upon the failure of plaintiffs' evidence to suggest any departure by the Board of Education from its fiduciary responsibilities. Accordingly, it is submitted that no issue meriting this Court's attention is presented.

II.

NO STATE STATUTE IS DRAWN INTO QUESTION BY THE DECISION OF THE APPELLATE COURT. THE APPELLATE COURT DID NOT CONSIDER THE VALIDITY OF ANY STATE ACTION AS MEASURED BY ANY FEDERAL LAW. JURISDICTION DOES NOT EXIST UNDER THE PROVISIONS OF 28 U.S.C. § 1257(2).

Appellants suggest that 28 U.S.C. § 1257(2) provides the jurisdictional basis for review of this cause. Section 1257(2) provides:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * *
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the grounds of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

Appellants contend that the adoption by the Board of the lease agreement with the City is a "statute of any state" as that term is employed by section 1257(2). (Jurisdictional Statement, 2, 11, A1-A2). In support of this contention Appellants cite *Hamilton v. Regents of University of California*, 293 U.S. 245 (1934), and *Lake Erie & Western R.R. v. State Public Utilities Commission of Illinois, ex rel. Cameron*, 249 U.S. 422 (1919). In *Hamilton* this Court held a mandatory military training rule adopted by the Board of Regents to be a "statute of any state" within the terms of the predecessor of section 1257(2). This Court said:

> The assailed order prescribes a rule of conduct and applies to all students belonging to the defined class. And it was because of its violation that the regents by resolution suspended these students. [293 U.S. 258]

Similarly in *Lake Erie & Western R.R.* a regulatory order of the state public utility commission was held a "state law" for the purposes of this Court's jurisdiction. Neither of these cases is supportive of the instant appellants' position. Here involved is a business decision of the Chicago Board of Education arising entirely out of the Board's proprietary functions. Unlike the rules at issue in *Hamilton* and *Lake Erie & Western R.R.*, the Board's business decisions with respect to income properties for which it has custodial responsibility have no regulatory dimension. It is submitted that for this reason the contract between the Board and the City is not a "statute of any state," and that jurisdiction for appeal in this Court is accordingly lacking.

Moreover, it is also clear that the Appellate Court did not have occasion to consider the validity of the Board's contract as measured against any provision of "the Constitution, treaties or laws of the United States." As the discussion in Point I, *supra*, indicates the Appellate Court did not consider any conflict of the contract with federal law for the reason that the Court found the factual determination that the Board received a fair market return on the property to be dispositive of the case. For this additional reason it is also submitted that the jurisdictional requirements of Section 1257(2) are not met.

CONCLUSION

Wherefore, Appellee, City of Chicago, respectfully submits that the questions upon which the decision of the cause depends are so unsubstantial as not to need further argument and that the cause does not meet statutory jurisdictional requirements. Appellee accordingly moves the Court to dismiss this appeal, or in the alternative to affirm the judgment entered in the cause by the Illinois Appellate Court.

Respectfully submitted,

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